

Exhibit D

Paragraph	Statement of Fact (include yellow highlight on any text under seal)	Dispute Category
5	<p>DOC's efforts have led to the completion of fifty-two (52) of the tasks required by the Nunez Action Plan and the subsequent Orders in 2023. As stated by Commissioner Lynelle Maginley-Liddie in her Declaration, DOC has completed provisions (A)(1)(c), (A)(2)(a), (A)(2)(b), (A)(2)(c), (A)(2)(d)(i), (A)(2)(d)(ii), (A)(2)(d)(iii), (A)(2)(e), (A)(2)(f), (A)(2)(f)(i), (A)(3)(a), (A)(3)(b)(ii), (A)(3)(b)(ii)(1), (A)(3)(b)(ii)(2), (A)(3)(b)(ii)(2)(a), (A)(3)(b)(ii)(2)(b), (A)(3)(b)(ii)(3), (A)(3)(b)(ii)(3)(iii), (A)(3)(c), (3)(1), (B)(2), (B)(4), (C)(1), (C)(2), (C)(5), (D)(1), (D)(5), (E)(1), (E)(2), (E)(2)(a), (E)(2)(b), (E)(2)(c), (E)(3)(a), (F)(1), (F)(1)(a), (F)(1)(b), (F)(2)(a)(i)-(iv), (F)(5), (F)(6), (F)(7), and (G)(1) of the Action Plan; provisions (I)(1)(a), (I)(2), (I)(5), (I)(6), (I)(7), (I)(7)(a), (II)(2) of the June 13, 2023 Order; provisions (I)(11), (I)(12), (I)(14) of the August 10, 2023 Order; and provision 1(a) of the December 14, 2023 Order. <u>See</u> Exhibit A at ¶ 22, and Appendix B thereto.</p>	Accuracy Dispute; Legal Dispute - Other
9	<p>As an initial matter, as demonstrated in the Kepler Declaration, the definition of "use of force" has shifted considerably since 2016. <u>See</u> Exhibit B at ¶¶ 9-10.</p>	Accuracy Dispute
10	<p>Indeed, "[u]nder DOC's policy, use of force is defined broadly: any time an officer makes contact with a non-compliant individual to compel behavior, it counts as a use of force, no matter how slight the contact.... This definition greatly expands the number of use of force incidents, well beyond those previously reported. Because of the change in definition, any comparison of 2016 and today is flawed." <u>See</u> Exhibit B at ¶¶ 9-11.</p>	Accuracy Dispute
12	<p>The injury classification of all use of force incidents are reviewed by the Investigation Division (ID) during the course of their investigation. If ID discovers additional information that requires a classification change, the recommendation is sent to the Office of Security, where evidence is reviewed, and incidents are reclassified if necessary. <u>See</u> Exhibit B at ¶ 9.</p>	Accuracy Dispute
13	<p>With the acknowledgement that incidents in the latter months of 2023 may be reclassified, there has been a meaningful decrease in the number of Use of Force incidents that result in injury. The number of incidents classified as "A" or "B" in the last six months of 2023 are lower than the first six months of 2023 both in the total number and in the proportion of total uses of force. <u>See</u> Exhibit B at ¶ 9.</p>	Accuracy Dispute; Legal Dispute - Other

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14	Use of Force by Injury Class from January 2023 - December 2023 is as follows: [chart] See Exhibit B at ¶ 9.	Accuracy Dispute
15	OMAP analysis shows that certain key trends are moving in the right direction. There were 477 slashings/stabbings in 2022 compared to 383 in 2023, a 19.7 percent reduction. <u>See</u> Exhibit B at ¶ 7.	Accuracy Dispute
17	Among the trends DOC has observed is a dramatic shift in the composition of the population of Rikers following New York State bail reform in January 2020. With bail reform, the DOC now houses individuals who are in its custody predominantly on charges of committing violent crimes. As of February 27, 2024, 28.6 percent of pre-trial detainees are being held on homicide charges; 11.8 percent on serious assault charges; 14.1 percent on robbery charges; and 7.8 percent on weapons charges. That is a total of 62.3 percent. By comparison on January 1, 2016, those held on homicide charges comprised 14.1 percent of detainees; serious assault charges, 9.1 percent; robbery charges, 14.4 percent; and weapons charges, 6.3 percent — a total of 43.9 percent. Gone in 2024 are recidivist shoplifters, low level drug dealers and fraudsters, who populated Rikers jails in earlier years. <u>See</u> Exhibit A at ¶ 24.	Legal Dispute - Materiality
19	Supervising a housing unit that is comprised almost entirely of violent individuals presents significantly greater challenges than one in which a significant portion of offenders are there for non-violent crimes. The latter group have one principal objective: to resolve their cases, do their time, and go home. They dilute the propensity for violence. <u>See</u> Exhibit A at ¶ 25.	Legal Dispute - Other
21	Reported increases in the use of force from 2016 to 2023 are explained, at least in part, by the omnipresence of the cameras. Today little goes unseen, and therefore little is unreported. <u>See</u> Exhibit A at ¶ 29.	Accuracy Dispute; Legal Dispute - Other
22	Detainees are also spending considerably more time in DOC's care. In 2016, the average length of stay was 59 days while in January 2024, it is 101 days. As of March 1, 2024 there are 508 detainees who have been in custody for more than two years. New York City's jails were not meant for such long-term stays, and the inevitable anxiety that comes from being in legal limbo contributes to the tension that breeds violence. This factor is not in DOC's control (DOC cannot move cases faster). <u>See</u> Exhibit A at ¶ 30.	Accuracy Dispute; Legal Dispute - Other

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23	DOC is committed to further reducing violence in its facilities. One demonstration of that commitment is enhanced training efforts. In partnership with the Monitor, Acting Deputy Commissioner Jeremiah Johnson has overseen the development of DOC's curriculum for training new captains. Twenty-one training modules were submitted to the Monitoring Team for review, all of which were approved as of February 21, 2024. <u>See Exhibit D (Declaration of Acting Deputy Commissioner Jeremiah Johnson) at ¶ 4.</u>	Legal Dispute - Other
24	In March 2024, DOC will commence training for a cohort of 25 new captains using a Monitor-approved curriculum. The classroom training will last five weeks, followed by two weeks of facility-based training. A second cohort of 25 will begin training in April, so that by the summer there will be 50 new captains on the job. Most of these individuals will be assigned to positions in the facilities working directly with incarcerated individuals. The training is designed to provide these new captains with the technical knowledge needed to be successful in their new roles. <u>See Exhibit D at ¶ 5.</u>	Legal Dispute - Other
25	Training for new Assistant Deputy Wardens ("ADWs") is being revised and will be resubmitted to the Monitor in June. <u>See Exhibit D at ¶ 6.</u>	Legal Dispute - Other
27	On February 28, 2024, the Monitor approved refresher training for the Department's Emergency Services ("ESU"). This curriculum was developed in coordination with the Monitor to address specified concerns regarding ESU. The training will be conducted quarterly and includes modules on search and escort procedures. <u>See Exhibit D at ¶ 9.</u>	Legal Dispute - Other
31	Following the introduction of the RNDC Violence Reduction Plan, in a review of data from the Incident Reporting System, showed there was a 57% decrease between the first six months of 2023 compared to the first six months of 2022. <u>See Exhibit J at ¶ 10.</u>	Accuracy Dispute
41	In the report, Dr. Belavich concluded that DOC has made "significant efforts in the area of suicide prevention over the past twelve months," and that it is "making an impact by identifying issues related to self-harm and making recommendations for change." As one example, Dr. Belavich cited the implementation of "daily health care and custody huddles" to share information among DOC and CHS line staff regarding incarcerated individuals who may present a self-harm concern. The practice began in August 2023. <u>See Exhibit L at ¶ 10 and Exhibit B (Belavich January 2024 Report) to the Saunders Declaration.</u>	Legal Dispute - Other

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44	Three of the four recommendations have been implemented by DOC, with only the recommendation to lower the jail population not being accomplished. Many of the most dangerous and disruptive incarcerated persons have been in custody for more than a year. But fulfilling this recommendation would require the assistance of the District Attorneys, Legal Aid Society and the Courts. <u>See</u> Exhibit H at ¶ 3.	Accuracy Dispute
45	As the three recommendations have been implemented since 2022, there has been an associated decline in the number and rate per 100 jail population of slashing, stabbings and serious assaults. Based upon data contained in the Department's Incident Reporting System and Master Facility Management Report, the number of assaults has significantly declined. <u>See</u> Exhibit H at ¶ 4 and Figure 1 (below). [figure]	Accuracy Dispute
46	Consistent with the recommendation to implement a more effective restricted housing program, Dr. Austin worked with DOC and in close consultation with the Monitor, to establish its Enhanced Supervision Housing program now referred to as RESH, a restrictive housing program for individuals who have been found by a hearing officer to have committed violent acts. The primary objective of RESH is to protect the safety and security of incarcerated individuals and facilities, while promoting rehabilitation, good behavior, and the psychological and physical well-being of incarcerated individuals. To accomplish these objectives, RESH is designed to separate from the general population those who pose the greatest threats to the safety and security of staff and other incarcerated individuals. <u>See</u> Exhibit H at ¶ 7.	Accuracy Dispute
47	According to Dr. Austin, the data concerning RESH demonstrates that DOC has successfully implemented the program. <u>See</u> Exhibit H at ¶ 16.	Accuracy Dispute; Legal Dispute - Other
50	Under the leadership of Ronald Brereton, Deputy Commissioner of Security Operations, DOC has initiated enhanced screening initiatives to assist in stemming the flow of contraband into the facilities including front entrance staff body scanning at three facilities, and cell phone detection systems at each facility. <u>See</u> Exhibit C (Declaration of Deputy Commissioner Ronald Brereton) at ¶ 20.	Accuracy Dispute
52	Active work is underway with respect to key control policies (to ensure all keys in circulation are accounted for and operational), upgrading cell doors and ensuring they are properly secured, ensuring staff remain on-post, and preventing crowding in vestibules. <u>See</u> Exhibit C at ¶¶ 21-30.	Accuracy Dispute

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57	Tour wand audits are generated and provided for leadership to review, and recommend discipline if there are not mitigating factors for failed tours. Since this procedure has begun, there has been significant improvement in staff compliance with Tour Wand usage Departmentwide. <u>See</u> Exhibit G at ¶¶ 5-6.	Accuracy Dispute; Legal Dispute - Other
64	Between January 1, 2023 and December 31, 2023, 494 Full ID investigations were closed. 182 (37 percent) of those investigations were closed within 120 days. ID is working to increase staffing levels to improve the timeliness of these investigations. <u>See</u> Exhibit E at ¶ 9.	Accuracy Dispute
65	Upon the appointment of Deputy Commissioner Pritchett in April 2023, the Use of Force Investigation Division Leadership has made diligent efforts to comply with the provisions of the Consent Judgment. The Use of Force Investigation Division Leadership developed a plan for improving the UOF investigations, adopting the Monitoring Team's suggestions while incorporating several additional initiatives. <u>See</u> Exhibit E at ¶¶ 11-12.	Accuracy Dispute; Legal Dispute - Other
76	The Commissioner's Office then compiles a list of action items that need attention and follows-up to ensure that action is taken. <u>See</u> Exhibit B at ¶ 12.	Accuracy Dispute
79	The Commissioner secured \$14.1 million for programs as a new need to serve the individuals in custody. The funding will be used for substance abuse programs, educational programs, transition planning, and trauma-informed programs, among others. <u>See</u> Exhibit B at ¶19.	Legal Dispute - Other